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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 RICHARD PLECHNER,

7 Plaintiff,

8 v.

9 ROB McKENNA (Attorney General for the  
10 State of Washington), STATE OF  
11 WASHINGTON DEPARTMENT OF  
12 CORRECTIONS, ELDON VAIL (Secretary),  
13 PAT GLEBE (Superintendent of SCCC),  
14 DOUG WADDINGTON (Superintendent of  
15 WCC), and RON FRAKER (Superintendent  
16 of CBCC),

17 Defendants.

No. C11-5544 RBL/KLS

**REPORT AND RECOMMENDATION**  
**Noted for: December 16, 2011**

18 On July 15, 2011, Plaintiff filed his proposed civil rights complaint. ECF No. 1. On  
19 August 1, 2011, Plaintiff was ordered to show cause why his complaint should not be dismissed.  
20 ECF No. 6. On August 29, 2011, Plaintiff requested a sixty day extension of time to comply  
21 with the Court's Order. ECF No. 9. The Court extended Plaintiff's deadline to October 25,  
22 2011. ECF No. 10. Plaintiff was cautioned that if he failed to show cause or amend his  
23 complaint by October 25, 2011, the Court would recommend dismissal of this action as frivolous  
24 pursuant to 28 U.S.C. § 1915. Plaintiff has not responded to the Court's Order. The undersigned  
25 recommends that the action be dismissed as frivolous.

26 **DISCUSSION**

Under the Prison Litigation Reform Act of 1995, the Court is required to screen  
complaints brought by prisoners seeking relief against a governmental entity or officer or

1 employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint  
2 or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that  
3 fail to state a claim upon which relief may be granted, or that seek monetary relief from a  
4 defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b)(1), (2) and 1915(e)(2);  
5 *Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

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7 A complaint is legally frivolous when it lacks an arguable basis in law or fact. *Neitzke v.*  
8 *Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir.  
9 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
10 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*,  
11 490 U.S. at 327. A complaint or portion thereof, will be dismissed for failure to state a claim  
12 upon which relief may be granted if it appears the “[f]actual allegations . . . [fail to] raise a right  
13 to relief above the speculative level, on the assumption that all the allegations in the complaint  
14 are true.” See *Bell Atlantic, Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007) (citations omitted).  
15 In other words, failure to present enough facts to state a claim for relief that is plausible on the  
16 face of the complaint will subject that complaint to dismissal. *Id.* at 1974.

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18 Although complaints are to be liberally construed in a plaintiff’s favor, conclusory  
19 allegations of the law, unsupported conclusions, and unwarranted inferences need not be  
20 accepted as true. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Neither can the court supply  
21 essential facts that an inmate has failed to plead. *Pena*, 976 F.2d at 471 (quoting *Ivey v. Board of*  
22 *Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)). Unless it is absolutely clear that  
23 amendment would be futile, however, a pro se litigant must be given the opportunity to amend  
24 his complaint to correct any deficiencies. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).  
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1 Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, “the complaint [must  
2 provide] ‘the defendant fair notice of what the plaintiff’s claim is and the ground upon which it  
3 rests.’” *Kimes v. Stone*, 84 F.3d 1121, 1129 (9th Cir. 1996) (citations omitted). In addition, in  
4 order to obtain relief against a defendant under 42 U.S.C. § 1983, a plaintiff must prove that the  
5 particular defendant has caused or personally participated in causing the deprivation of a  
6 particular protected constitutional right. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).  
7 To be liable for “causing” the deprivation of a constitutional right, the particular defendant must  
8 commit an affirmative act, or omit to perform an act, that he or she is legally required to do, and  
9 which causes the plaintiff’s deprivation. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

11 Plaintiff claims generally that since June 17, 2009 he has been deprived of newspapers,  
12 magazines, television and radio. He claims that he has been denied proper care for his medical  
13 problems and mental health issues, family visits, educational and/or vocational programs,  
14 envelopes, and access to a telephone to contact his attorney. From the grievances attached to his  
15 complaint, it appears that Plaintiff claims to suffer from hearing loss, degenerative disc and bone  
16 disease and arthritis. He also alleges that he has been limited to 5 grievances, thus limiting his  
17 right to seek redress. ECF No. 5. Plaintiff sues the Washington Department of Corrections  
18 (DOC), the attorney general of the state of Washington, the former secretary of DOC, and the  
19 superintendents of various facilities where Plaintiff has been housed.

21 Plaintiff was previously advised that the DOC is not a “person” for purposes of a section  
22 1983 civil rights action. Section 1983 authorizes assertion of a claim for relief against a  
23 “person” who acted under color of state law. A suable §1983 “person” encompasses state and  
24 local officials sued in their personal capacities, municipal entities, and municipal officials sued in  
25 an official capacity. See also, *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989).  
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1 Plaintiff was further advised that he has failed to allege what the individually named defendants  
2 did or did not do that caused him constitutional harm.

3 Under 42 U.S.C. § 1983, claims can only be brought against people who personally  
4 participated in causing the alleged deprivation of a right. *Arnold v. IBM*, 637 F.2d 1350, 1355  
5 (9th Cir. 1981). Neither a State nor its officials acting in their official capacities are  
6 “persons” under section 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989).  
7 Plaintiff must set forth factual allegations and allege with specificity the names of the persons  
8 who caused or personally participated in causing the alleged deprivation of his constitutional  
9 rights. “A defendant cannot be held liable under 42 U.S.C. § 1983 solely on the basis of  
10 supervisory responsibility or position.” *Monell v. New York City Dept. of Social Services*, 436  
11 U.S. 658, 694 n.58 (1978). A theory of *respondeat superior* is not sufficient to state a §1983  
12 claim. *Padway v. Palches*, 665 F.2d 965 (9th Cir. 1982).  
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14 Thus, Plaintiff must allege with specificity the names of the individual persons who  
15 caused or personally participated in causing the alleged deprivation of his constitutional rights  
16 and what they have done or failed to do that resulted in the deprivation of his constitutional  
17 rights. Plaintiff may not simply rely on naming the heads of various institutions because  
18 supervisors cannot be held liable for the actions or non-actions of their subordinates merely  
19 because they are supervisors. Despite having been so advised and having been given an  
20 opportunity to do so, Plaintiff has failed to amend his complaint.  
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### 23 CONCLUSION

24 Plaintiff has been given ample opportunity to file an amended complaint to cure the noted  
25 deficiencies of his complaint. Plaintiff was warned that if he failed to do so or failed to  
26 adequately address the issues raised in the Court’s Order, the Court would recommend dismissal

1 of this action as frivolous pursuant to 28 U.S.C. § 1915 and the dismissal will count as a “strike”  
2 under 28 U.S.C. § 1915(g). ECF No. 11, p. 7. Plaintiff has failed to state a cognizable claim  
3 pursuant to 42 U.S.C. § 1983. Accordingly, it is recommended that case should be **dismissed**  
4 **without prejudice and the dismissal counted as a “strike” under 28 U.S.C. § 1915(g).**

5 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
6 Procedure, the parties shall have fourteen (14) days from service of this Report to file written  
7 objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
8 objections for purposes of appeal. *Thomas v Arn*, 474 U.S. 140 (1985). Accommodating the  
9 time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on  
10 **December 16, 2011**, as noted in the caption.

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13 **DATED** this 29th day of November, 2011.

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17 Karen L. Strombom  
18 United States Magistrate Judge  
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